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IN THE

Supreme Court of the United States

October Term, 1970

No. 553

JAMES ALFRED MARTIN, doing business as SILKO NEW IMPROVED PRODUCTS COMPANY,
Petitioner,

v.

CROWN ZELLERBACH CORPORATION.
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CUSTOMS AND PATENT APPEALS

PETITION FOR REHEARING

JAMES ALFRED MARTIN
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Birmingham, Alabama 35205
Pro se

Birmingham Publishing Company

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The petitioner herein respectfully moves this Court for an order (1) vacating its denial of the petition for writ of certiorari, entered on November 9, 1970, (2) granting the petition, and (3) summarily reversing the decision below. As grounds for this motion, petitioner states the following:

THE PRIORITY OF NATIONAL DEFENSE

In the opinion of the Trademark Trial and Appeal Board, on page 17 of Appendix "B" of the petition for writ of certiorari, it was stated: "During the period from November 13, 1935 through April 30, 1952, the total sales of opposer's pred-

ecessor company exceeded four and one half million dollars, of which seventy percent represented sales of "SILK" toilet paper. The total sales of "SILK" toilet paper from May 1, 1952 to August 31, 1965 approximated twenty-three million dollars." On page 18 it was stated that less than 100 cases of toilet tissue had been sold by the petitioner. ...

From 1935 to 1955 petitioner was in the Service performing duties for national defense.[1] Petitioner helped prevent sabotage of foreign merchant ships in Boston Harbor before World War II and assisted with communications on board ship for the State Department in Lisbon, Portugal. Prior to the attack on Pearl Harbor petitioner was at sea in a combat zone. A merchant ship with a disabled rudder was taken in tow in mid-Atlantic and towed to safety by a ship to which petitioner was assigned as an officer, and gasoline barges lost in the winter between Greenland and Labrador; en route to the Armed Forces in Greenland, where located. In 1943 during the height of the Battle of the North Atlantic, petitioner was gunnery officer on board an anti-submarine vessel engaged in escorting convoys of merchant ships, combating submarine attacks and rescuing survivors of sunken ships, which included officer personnel of the United States Army.

In 1945 petitioner was Commanding Officer of a combat vessel 309 feet long on duty in the North Atlantic. In addition to combating submarine attacks, the ship acted as plane guard on ocean weather stations, sending weather reports for trans-Atlantic flights of planes and ready to assist in case of distress or forced landing at sea. Medical assistance was rendered to passenger and cargo vessels; including the transfer of a seaman to petitioner's ship where a successful appendectomy was performed at sea in rough weather by the Medical Officer.

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[1]Appointed a cadet in the United States Coast Guard after taking a competitive examination given throughout the United States in 1935 and ranking number eleven thereon, petitioner was commissioned an Ensign in 1940 and retired with rank of Lieutenant Commander, U.S.C.G., on May 1, 1955.

The Trademark Trial and Appeal Board created rights for the respondent on the basis of toilet paper sales made during time of war to the detriment of the petitioner who was performing sea duty for national defense.

For the reasons set forth above as well as those contained in the petition for writ of certiorari and supplement thereto, which makes inapplicable the principle of the Breuer Electric Co. case, on page 20, the petitioner prays that this Court grant rehearing of the order of denial, vacate that order, grant the petition and summarily reverse the judgment and opinion.

Respectfully submitted,

James Alfred Martin

JAMES ALFRED MARTIN
212 9th Avenue, South
Birmingham, Alabama 35205
Pro se

November 30, 1970

CERTIFICATE OF PETITIONER

As petitioner, I hereby certify that this petition for rehearing is presented in good faith and not for delay and is restricted to the grounds specified in Rule 58 (2).

James Alfred Martin

JAMES ALFRED MARTIN